
Please Direct All Correspondence to Customer No. 20995

APPEAL BRIEF

Applicant	: James A. Harding, et al.
App. No	: 10/750,163
Filed	: December 31, 2003
For	: PROFILING ITEMS SELLERS TO INFORM ITEM PURCHASING DECISIONS AND BUILD TRUST IN A MULTIPLE-SELLER MARKET PLACE
Examiner	: Amee A. Shah
Art Unit	: 3625
Conf No.	: 5011

Mail Stop Appeal Brief-Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Applicant, Appellant in the above-captioned patent application, appeals the final rejection of claims 3-11 and 33-70 is set forth in the final Office Action issued on October 16, 2009 (the "Final Office Action"). Please charge any additional fees that may be required now or in the future to Deposit Account No. 11-1410.

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I. REAL PARTY IN INTEREST

The real party in interest in the present application is Amazon Technologies, Inc., the assignee of the present application.

II. RELATED APPEALS AND INTERFERENCES

No related appeals, interferences, or court proceedings are currently pending.

III. STATUS OF CLAIMS

Claims 3-11 and 33-72 are currently pending in the application. Claims 1-2, and 12-32 are canceled and claims 71 and 72 are withdrawn. Claims 3-11 and 33-70 are the subject of this appeal. The pending claims are listed as an appendix.

IV. STATUS OF AMENDMENTS

No amendments have been made in response to the Final Office Action.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The present application includes five independent claims, claims 3, 7, 8, 58 and 71, with claim 71 being withdrawn. Independent claims 3, 7, 8, and 58 are summarized below, with citations to corresponding portions of the specification and drawings as required by 37 C.F.R. § 41.37(c)(1)(v). These citations illustrate specific examples and embodiments of the recited claim language, and do not limit the claims.

Independent Claim 3

Independent claim 3 is directed to a method in a computing system for responding to a request for information about an item, (*see, e.g.*, ¶ [0032]; Fig.8).

The method for responding to a request for information about an item includes at least:

- receiving at the computer system a request for information about the item from a user; (*see, e.g.*, ¶ [0032]; Fig.8, block 801)

- among a plurality of sellers, identifying via the computer system those (1) that are offering the item for sale, (2) whose availability level for the item exceeds a predetermined availability threshold, and (3) having a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold; (*see, e.g.*, ¶¶ [0026]-[0030]; ¶ [0032]; Fig.6, block 603; Fig. 8, blocks 803-805)
- selecting via the computer system as the featured seller of the item, from the sellers identified among the plurality of sellers, the identified seller that is offering the item at the lowest price; (*see, e.g.*, ¶ [0032]; Fig.8, block 806)
- replying via the computer system to the request for information with a web page associated with a web page containing both (1) information describing the item, and (2) a control that, when activated, adds the item to a shopping cart associated with the user so that the order will be placed from the featured seller when check out is performed, wherein the user can complete the purchase from the featured seller via the website, without performing any subsequent interactions. (*see, e.g.*, ¶ [0023]; ¶ [0032]; Fig. 2, block 200; Fig. 8, blocks 808, 809)

Independent Claim 7

Independent claim 7 is directed to a computing system for responding to a request for information about an item, (*see, e.g.*, ¶¶ [0019]-[0020]; ¶ [0032]; Figs. 1 and 8).

The computing system for responding to a request for information about an item includes at least:

- a receiving subsystem, including program code stored computer readable memory that when executed by a processor performs the act of receiving a request for information about the item; (*see, e.g.*, ¶¶ [0019]-[0020]; ¶ [0032]; Fig. 1, block 150; Fig. 8, block 801)

- an identification subsystem, including program code stored computer readable memory that when executed by a processor performs the act of identifying, among a plurality of sellers, those (1) that are offering the item for sale, (2) whose availability level for the item exceeds a predetermined availability threshold, and (3) having a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold; (*see, e.g.*, ¶¶ [0019]-[0020]; ¶¶ [0026]-[0030]; ¶ [0032]; Fig. 1, block 150; Fig.6, block 603; Fig. 8, blocks 803-805)
- a selection subsystem, including program code stored computer readable memory that when executed by a processor performs the act of selecting from the sellers identified among the plurality of sellers as the featured seller of the item the identified seller that is offering the item at the lowest price; (*see, e.g.*, ¶¶ [0019]-[0020]; ¶ [0032]; Fig. 1, block 150; and Fig. 8, block 806)
- a reply subsystem, including program code stored computer readable memory that when executed by a processor performs the act of replying to the request for information with a web page associated with a website containing both (1) information describing the item, and (2) a control that when activated, adds the item to a shopping cart and indicates that an order for the item is to be placed with the featured seller, wherein the user can complete the purchase from the featured seller via the website, without performing any subsequent interactions. (*see, e.g.*, ¶¶ [0019]-[0020]; ¶ [0023]; ¶ [0032]; Fig. 1, block 150, Fig. 2, block 200; Fig. 8, blocks 808, 809)

Independent Claim 8

Independent claim 8 is directed to a computer readable medium comprising a page definition data structure and instructions which when executed by a processor are configured to display content (*see, e.g.*, ¶¶ [0019]-[0020]; ¶ [0032]; Figs. 1 and 8).

The page definition data structure and instructions are configured to display at least:

- content specifying the display of information describing a selected item; (*see, e.g.*, ¶¶ [0019]-[0020]; ¶ [0032]; Fig 2, block 200)
- content specifying the display of a shopping cart control that may be activated to add the selected item to a shopping cart to enable the ordering of the selected item from a distinguished one of a plurality of sellers, wherein items from multiple sellers can be added to the shopping cart, the distinguished seller being selected by offering the selected item for sale at the lowest price among those sellers of the plurality (1) that are offering the item for sale, (2) whose availability level for the selected item exceed a predetermined availability threshold, and (3) having a seller score that exceeds a predetermined score threshold. (*see, e.g.*, ¶¶ [0019]-[0020]; ¶ [0023]; ¶¶ [0026]-[0030]; ¶ [0032]; Fig. 1, block 150; Fig. 2, block 200; Fig.6, block 603; Fig. 8, blocks 803-805)

Independent Claim 58

Independent claim 58 is directed to a method in a computing system for responding to a request for information about an item, (*see, e.g.*, ¶ [0032]; Fig.8).

The method for responding to a request for information about an item includes at least:

- receiving at the computer system a request for information about the item provided by a user; (*see, e.g.*, ¶ [0032]; Fig.8, block 801)
- among a plurality of sellers, identifying, using the computer system, those that are:
 - offering the item for sale;
 - have an availability level that satisfies a first criterion;
 - have a seller score relating to a plurality of different items offered for sale by the seller that satisfies a second criterion;

(see, e.g., ¶¶ [0026]-[0030]; ¶ [0032]; Fig.6, block 603; Fig. 8, blocks 803-805)

- selecting among the identified sellers, using the computer system, as a distinguished seller a seller that is offering the item at a lowest price, offering the item for sale, has an availability level that satisfies the first criterion, and has a seller score that satisfies the second criterion; (see, e.g., ¶ [0032]; Fig.8, block 806)

- providing, via the computer system, for display to the user:
 - a perceptible distinction with respect to the distinguished seller;
 - a price at which the distinguished seller is offering the item; and
 - a shopping cart control that, when activated, adds the item to a shopping cart associated with the user.

(see, e.g., ¶ [0023]; ¶ [0032]; Fig 2., block 200; Fig. 8, blocks 808, 809)

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The following grounds of rejection are to be reviewed on appeal:

- The rejection of claims 3, 5-11, 33, 40-42, 45, 52-54, 58, 59, and 66-68 under 35 U.S.C. § 103(a) as being unpatentable over Miller et al., US 2001/0054008 A1 (hereafter referred to as "Miller") in view of English, US 2003/0055723 A1 (hereafter referred to as "English"), further in view of Chopra, US 2002/0128920 A1 (hereafter referred to as "Chopra"), and further in view of Hartman et al., US 5,960,411 (hereafter referred to as "Hartman").
- The rejection of claim 4 under 35 U.S.C. § 103(a) as being unpatentable over Miller in view of English, further in view of Chopra, further in view of Hartman, and further in view of Das et al., US 2003/0023499 A1 (hereafter referred to as "Das").
- The rejection of claims 34-39, 46-51 and 61-65 under 35 U.S.C. § 103(a) as being unpatentable over Miller in view of English, further in view of Chopra, further in view of

Harman, and further in view of Callender et al., US 2002/0147657 (hereafter referred to as "Callender").

- The rejection of claims 43, 44, 55-57, 69 and 70 under 35 U.S.C. § 103(a) as being unpatentable over Miller in view of English, further in view of Chopra, further in view of Hartman, and further in view of Abdulhayoglu, US 7,296,053 B1 (hereafter referred to as "Abdulhayoglu").

- The rejection of claims 4 and 5 under 35 U.S.C. § 112, first paragraph.

All of the claims that are not separately argued properly stand or fall with the respective claims from which they depend.

Appellants reserve the right to disqualify one or more of the applied references as "prior art" in the future.

VII. ARGUMENT

For the reasons explained below, Appellant respectfully submits that all of the grounds for rejection are improper. By declining to present arguments in connection with certain claims and claim recitations, Appellant does not imply that these claims and claim recitations are disclosed or rendered obvious by the cited art.

1. Claims 3, 5-11, 33, 40-42, 45, 52-54, 58, 59, and 66-68 are not obvious over the combination of Miller, English, Chopra, and Hartman

Claims 3, 5-11, 33, 40-42, 45, 52-54, 58, 59, and 66-68 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Miller in view of English, further in view of Chopra, and further in view of Hartman. Each independent claim, and several of the dependent claims, are discussed below. The dependent claims that are not separately argued properly stand or fall with the corresponding independent claim.

Miller discloses selecting a vendor based on a list of user-selected products. Miller further discloses that the criteria for selecting the vendor includes at least one of price, proximity to the vendor, availability of delivery, whether the products are in stock, wrapping availability, shipping availability, tracking availability, and a loyalty program. Miller additionally discloses a

portal page for presenting product information to a user, including a list of product names for which the user has entered barcode information, and the name of vendors of the product.

English discloses providing, at a virtual point-of-payment at which a user is paying for products, information for one or more alternative vendors from which the user may obtain the same or similar products. English discloses allowing users to rate vendors, and also discloses providing a user with information about alternative vendors of a product when the user rating is below a certain threshold level or when the alternate vendors have higher user ratings. English further discloses taking into account a stored aggregate user rating of the current vendor, so as to select only alternative vendors with a higher aggregate user rating.

Chopra discloses systems and methods for facilitating lowest price purchases of one or more products and/or services, and in particular, systems and methods for receiving orders for products and/or services, searching source or vendor databases to locate the lowest prices for those products and/or services, and facilitating the purchase of products and/or services from the vendors having the lowest prices. Chopra further discloses receiving an order for multiple products, and determining which products are being offered by which sources at the lowest costs. As part of this process, if one source is offering some of the products in an order at a lowest price, and another source is offering the rest of the products in the order at a lowest price for those products, the order is divided into two groups to take advantage of the two separate lowest purchase cost sources. Alternatively, the process determines the total price for a complete order from multiple sources and compares those total prices to determine the lowest and the consumer is given the opportunity to purchase the order from the lowest price provider.

Hartman discloses a method and system for single-action ordering of items in a client/server environment.

Independent Claims 3, 7 and 58

The Final Office Action collectively rejected independent claims 3, 7 and 58 using the same argument. Applicant will address the rejection of each of claims 3, 7 and 58 below.

Independent Claim 3

Independent claim 3 stands rejected under 35 USC § 103(a) over Miller in view of English, further in view of Chopra, and further in view of Hartman.

The rejection of claim 3 is improper at least because the combination of Miller, English, Chopra, and Hartman does not teach or suggest each element of claim 3.

Claim 3 reads as follows:

A method in a computing system for responding to a request for information about an item, comprising:

receiving at the computer system a request for information about the item from a user;

among a plurality of sellers, identifying via the computer system those (1) that are offering the item for sale, (2) whose availability level for the item exceeds a predetermined availability threshold, and (3) having a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold;

selecting via the computer system as the featured seller of the item, from the sellers identified among the plurality of sellers, the identified seller that is offering the item at the lowest price; and

replying via the computer system to the request for information with a web page associated with a web page containing both (1) information describing the item, and (2) a control that, when activated, adds the item to a shopping cart associated with the user so that the order will be placed from the featured seller when check out is performed, wherein the user can complete the purchase from the featured seller via the website, without performing any subsequent interactions.

The rejection of claim 3 is improper at least because Miller, English, Chopra, and Hartman do not collectively teach or suggest, in the context of the other recitations of the claim, “among a plurality of sellers, identifying via the computer system those (1) that are offering the item for sale, (2) whose availability level for the item exceeds a predetermined availability threshold, and (3) having a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold; selecting via the computer system as the featured seller of the item, from the sellers identified among the plurality of sellers, the identified seller that is offering the item at the lowest price.”

In connection with the foregoing features, the Final Office Action alleges, at page 5, that Miller, at Fig. 11 and ¶¶ 0176-0179, discloses the features of selecting via the computer system as the featured seller of the item, from the sellers identified among the plurality of sellers, the identified seller that is offering the selected item at the lowest price. However, the Final Office

Action has mischaracterized Miller as Miller lacks the foregoing feature. The only reference to price in ¶¶ 0176-0179 of Miller is as follows:

*[0178] **Preferably, the criteria for selecting the vendor includes at least one of price, proximity to the vendor, availability of delivery, whether the products are in stock, wrapping availability, shipping availability, tracking availability, and a loyalty program.***

[0179] As an option, an availability and price of the products at each of a plurality of vendors are determined summaries are output.

Thus, the foregoing citation mentions that price may be used as one of the criteria used in selecting a vendor, but the citation completely fails to disclose, for example, selecting as a featured seller the seller that is offering the selected item at the lowest price, as alleged by the Final Office Action. Indeed, the citation to Miller fails to even mention identifying a seller offering an item at the lowest price.

Further, the Final Office Action admits that Miller fails to disclose the features of identifying sellers that have a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold. However, the Final Office Action relies on English, ¶ 0061, to supply the foregoing feature. The Final Office Action also asserts that it would have been obvious to add this feature to Miller's identification of sellers. Appellant respectfully disagrees.

With respect to a score threshold, English, ¶ 0061, recites:

*[0062] If desired, instead of a binary, thumbs up/thumbs down rating, the system could enable users to provide a rating on a scale, such as from 1-10, or A-F. In such a case, the system could provide information about alternative vendors when the rating is below a certain threshold level; or **could provide information of alternate vendors that provide the same (or similar) product**, but with higher user ratings than the current vendor. In this variation, the referral software 460 operates as before, but takes into account **a stored aggregate rating of the current vendor**, so as to select only alternative vendors with a higher aggregate rating. For example, if the current vendor has **an aggregate rating (based on ratings from many users)** of 7.5 (on a 1-10 scale), then the referral software 460 can limit its search to vendors with an aggregate rating greater than 7.5. ... (emphasis added)*

Thus, it is evident from the bolded and underlined text above, the "aggregate rating" of English is an aggregate of the ratings of many users, **not a seller score relating to a plurality of different items** offered for sale by the seller, as alleged. Consequently, even if, *arguendo*, this feature of English were added to Miller, the resulting method would not identify a seller having a

seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold, and so would not operate as described in claim 3.

Further, the Final Office Action, at page 7, admits that the combination of Miller and English fails to disclose identifying a seller based on the lowest price (contradicting the allegation earlier made by the Final Office Action, that Miller discloses identifying a seller based on the lowest price). Nonetheless, the Final Office Action relies on Chopra to supply the features missing from Miller and English, alleging:

Chopra teaches a method for providing lowest cost purchasing including identifying a seller based on the lowest price (§¶ 0023-0026) and wherein the user does not navigate to the featured seller Web site to complete the purchase from the featured seller but orders it directly from the website (§¶ 0029).threshold (§0062 - note the score is the aggregate rating and the predetermined threshold is the current vendor aggregate rating).

However, even assuming that the score of English were included in the criteria of Miller, and even further assuming that Chopra disclosed identifying a seller offering the lowest price for an item, the result would lack the feature of *first* performing an identification of sellers of an item using a set of criteria, and *then* selecting a featured seller from those identified sellers using lowest price for the item.

The Final Office Action fails to even discuss or acknowledge that the order in which criteria are used to identify sellers and to select a featured seller can alter which seller is selected as a featured seller. Indeed, the Final Office Action fails to even provide a rationale as to why the combination of Miller, English, Chopra, and Hartman should be modified to *first* identify sellers of an item using a set of criteria, and *then* select a featured seller from those identified sellers using lowest price for the item (rather than, for example, first identify sellers using lowest price for the item and then using a set of criteria to select from identified sellers a featured seller).

Chopra states that its “invention relates to systems and methods for receiving orders for products and/or services, searching source or vendor databases to locate the lowest prices for those products and/or services”. Thus, using the combination of Miller, English, Chopra, and Hartman, if the method of Chopra was used first to identify the lowest cost vendors, and the criteria of Miller and English were then used to select a featured seller from the lowest cost vendors, a different vendor would be identified as a featured seller as compared to the featured

seller that would be selected via the claimed method (e.g., where the sellers are first identified based on availability levels and seller scores, and from the identified sellers a featured seller is selected based on lowest item price).

Because the Final Office Action fails to address the order in which criteria are used to perform the identification and selection, and further fails to provide a rationale to modify the combination of Miller, English, Chopra, and Hartman to *first* identify sellers of an item using a set of criteria, and *then* select a featured seller from those identified sellers using lowest price for the item, the Final Office Action has failed to make a prima facie case of obviousness.

In addition, the Final Office Action fails to articulate, for example how the combination of Miller, English, Chopra, and Hartman would result “in an improved method that would allow for customers to get the information they desire regarding price,” as alleged by the Final Office Action, or even mention what types of information a customer desires, and so fails to articulate an adequate rationale for modifying Miller as proposed.

In response to a similar discussion provided in Appellant’s June 25, 2009 Communication, the Final Office Action (at page 19), alleges that “applicant’s arguments are effectively against the references individually, and one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.” However, Appellant is not arguing against the references individually. Instead, Appellant is pointing out that even if the disclosure of the individual references are combined as set forth in the Final Office Action, the combination of Miller, English, Chopra, and Hartman still fails to teach or suggest the invention as defined by claim 3 as a whole. The Final Office Action fails apply the correct legal standard in making a determination of obviousness, because the Final Office Action fails to consider the claim as a whole. As stated in M.P.E.P. 2141.02: “In determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious.” (Emphasis original, citations omitted.)

Thus, in the present case, the Final Office Action cannot meet its burden under 35 U.S.C. § 103 by merely showing that the relevant claim features missing from Miller (involving: identifying sellers that have a seller score relating to a plurality of different items that exceeds a score threshold; identifying a seller offering the lowest price; enabling a user to complete a

purchase from a seller via a website without performing any subsequent interaction) are allegedly disclosed respectively in English, Chopra and Hartman. Rather, the Final Office Action must establish that it would have been obvious to incorporate the features of English, Chopra and Hartman into Miller in the manner set forth in claim 3. As explained above, the Final Office Action fails to meet that burden.

Given these differences between claim 3 and the asserted combination of Miller and English, Chopra and Hartman, and the lack of a clear articulation of the reasons why the claimed invention would still be obvious, the Final Office Action does not establish a prima facie case of obviousness with respect to claim 3. See MPEP § 2142 (stating that “the key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious.”).

For at least these reasons, the rejection of independent claim 3 is improper.

Independent Claim 7

Independent claim 7 reads as follows:

A computing system for responding to a request for information about an item, comprising:

a receiving subsystem, including program code stored computer readable memory that when executed by a processor performs the act of receiving a request for information about the item;

an identification subsystem, including program code stored computer readable memory that when executed by a processor performs the act of identifying, among a plurality of sellers, those (1) that are offering the item for sale, (2) whose availability level for the item exceeds a predetermined availability threshold, and (3) having a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold;

a selection subsystem, including program code stored computer readable memory that when executed by a processor performs the act of selecting from the sellers identified among the plurality of sellers as the featured seller of the item the identified seller that is offering the item at the lowest price; and

a reply subsystem, including program code stored computer readable memory that when executed by a processor performs the act of replying to the request for information with a web page associated with a website containing both (1) information describing the item, and (2) a control that when activated, adds the item to a shopping cart and indicates that an order for the item is to be placed with the featured seller, wherein the user can complete the purchase from the featured seller via the website, without performing any subsequent interactions.

Claim 7 was rejected in the Final Office Action collectively with claim 3. Appellant therefore respectfully maintains that at least for the reasons discuss above with respect to claim 3, the rejection of claim 7 is improper. In particular, the rejection of claim 7 is improper at least because Miller, English, Chopra, and Hartman do not teach or render obvious the following features of claim 7 in the context of the other recitations of the claim:

an identification subsystem, including program code stored computer readable memory that when executed by a processor performs the act of identifying, among a plurality of sellers, those (1) that are offering the item for sale, (2) whose availability level for the item exceeds a predetermined availability threshold, and (3) having a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold;

a selection subsystem, including program code stored computer readable memory that when executed by a processor performs the act of selecting from the sellers identified among the plurality of sellers as the featured seller of the item the identified seller that is offering the item at the lowest price;

In connection with the foregoing features, the Final Office Action alleges, at page 5, that Miller, at Fig. 11 and ¶¶ 0176-0179, discloses the features of selecting via the computer system as the featured seller of the item, from the sellers identified among the plurality of sellers, the identified seller that is offering the selected item at the lowest price. However, the Final Office Action has mischaracterized Miller as Miller lacks the foregoing feature, as discussed above with respect to claim 3. The only reference to price in ¶¶ 0176-0179 of Miller is as follows:

*[0178] **Preferably, the criteria for selecting the vendor includes at least one of price, proximity to the vendor, availability of delivery, whether the products are in stock, wrapping availability, shipping availability, tracking availability, and a loyalty program.***

[0179] As an option, an availability and price of the products at each of a plurality of vendors are determined summaries are output.

Thus, the foregoing citation mentions that price may be used as one of the criteria used in selecting a vendor, but the citation completely fails to disclose, for example, selecting as a featured seller the seller that is offering the selected item at the lowest price, as alleged by the Final Office Action. Indeed, the citation to Miller fails to even mention identifying a seller offering an item at the lowest price.

Further, the Final Office Action admits that Miller fails to disclose the features of identifying sellers that have a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold. However, the Final Office Action relies on English, ¶ 0061, to supply the foregoing feature. The Final Office Action also asserts that it would have been obvious to add this feature to Miller's identification of sellers. Appellant respectfully disagrees.

With respect to a score threshold, English, ¶ 0061, recites:

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Thus, as similarly discussed above with respect to claim 3, it is evident from the bolded and underlined text above, the "aggregate rating" of English is an aggregate of the ratings of many users, **not a seller score relating to a plurality of different items** offered for sale by the seller, as alleged. Consequently, even if, *arguendo*, this feature of English were added to Miller, the resulting system would not identify a seller having a seller score relating to a plurality of

different items offered for sale by the seller that exceeds a predetermined score threshold, and so would not operate as described in claim 7.

Further, the Final Office Action, at page 7, admits that the combination of Miller and English fails to disclose identifying a seller based on the lowest price (contradicting the allegation earlier made by the Final Office Action, that Miller discloses identifying a seller based on the lowest price). Nonetheless, the Final Office Action relies on Chopra to supply the features missing from Miller and English, alleging:

Chopra teaches a method for providing lowest cost purchasing including identifying a seller based on the lowest price (§¶ 0023-0026) and wherein the user does not navigate to the featured seller Web site to complete the purchase from the featured seller but orders it directly from the website (§¶ 0029).threshold (§¶0062 - note the score is the aggregate rating and the predetermined threshold is the current vendor aggregate rating).

However, even assuming that the score of English were included in the criteria of Miller, and even further assuming that Chopra disclosed identifying a seller offering the lowest price for an item, the result would lack the feature of *first* performing an identification of sellers of an item using a set of criteria, and *then* selecting a featured seller from those identified sellers using lowest price for the item.

The Final Office Action fails to even discuss or acknowledge that the order in which criteria are used to identify sellers and to select a featured seller can alter which seller is selected as a featured seller. Indeed, the Final Office Action fails to even provide a rationale as to why the combination of Miller, English, Chopra, and Hartman should be modified to *first* identify sellers of an item using a set of criteria, and *then* select a featured seller from those identified sellers using lowest price for the item (rather than, for example, first identify sellers using lowest price for the item and then using a set of criteria to select from identified sellers a featured seller).

Chopra states that its “invention relates to systems and methods for receiving orders for products and/or services, searching source or vendor databases to locate the lowest prices for those products and/or services”. Thus, using the combination of Miller, English, Chopra, and Hartman, if the method of Chopra were used to identify the lowest cost vendors, and the criteria of Miller and English were then used to select a featured seller from the lowest cost vendors, a different vendor would be identified as a featured seller as compared to the featured seller that

would be selected via the claimed system (e.g., where the sellers are first identified based on availability levels and seller scores, and from the identified sellers a featured seller is selected based on lowest item price).

Because the Final Office Action fails to address the order in which criteria are used to perform the identification and selection, and further fails to provide a rationale to modify the combination of Miller, English, Chopra, and Hartman to *first* identify sellers of an item using a set of criteria, and *then* select a featured seller from those identified sellers using lowest price for the item, the Final Office Action has failed to make a prima facie case of obviousness.

In addition, the Final Office Action fails to articulate, for example how the combination of Miller, English, Chopra, and Hartman would result “in an improved method that would allow for customers to get the information they desire regarding price,” as alleged by the Final Office Action, or even mention what types of information a customer desires.

In response to a similar discussion provided in Appellant’s June 25, 2009 Communication, the Final Office Action (at page 19), alleges that “applicant’s arguments are effectively against the references individually, and one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.” However, Appellant is not arguing against the references individually. Instead, Appellant is pointing out that even if the disclosure of the individual references are combined as set forth in the Final Office Action, the combination of Miller, English, Chopra, and Hartman still fails to teach or suggest the invention as defined by claim 7 as a whole. The Final Office Action fails apply the correct legal standard in making a determination of obviousness, because the Final Office Action fails to consider the claim as a whole. As stated in M.P.E.P. 2141.02: “In determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious.” (Emphasis original, citations omitted.)

Thus, in the present case, the Final Office Action cannot meet its burden under 35 U.S.C. § 103 by merely showing that the relevant claim features missing from Miller (involving: an identification subsystem that performs that act of identifying sellers that have a seller score relating to a plurality of different items that exceeds a score threshold; a identification subsystem that performs that act of identifying a seller offering the lowest price; a reply subsystem that

performs that act of enabling a user to complete a purchase from a seller via a website without performing any subsequent interaction) are allegedly disclosed respectively in English, Chopra and Hartman. Rather, the Final Office Action must establish that it would have been obvious to incorporate the features of English, Chopra and Hartman into Miller in the manner set forth in claim 7. As explained above, the Final Office Action fails to meet that burden.

Given these differences between claim 7 and the asserted combination of Miller and English, Chopra and Hartman, and the lack of a clear articulation of the reasons why the claimed invention would still be obvious, the Final Office Action does not establish a prima facie case of obviousness with respect to claim 7. See MPEP § 2142 (stating that “the key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious.”).

For at least these reasons, the rejection of independent claim 7 is improper.

Independent Claim 58

Independent claim 58 reads as follows:

A method in a computing system for responding to a request for information about an item, comprising:

receiving at the computer system a request for information about the item provided by a user;

among a plurality of sellers, identifying, using the computer system, those that are:

offering the item for sale;

have an availability level that satisfies a first criterion;

have a seller score relating to a plurality of different items offered for sale by the seller that satisfies a second criterion;

selecting among the identified sellers, using the computer system, as a distinguished seller a seller that is offering the item at a lowest price, offering the item for sale, has an availability level that satisfies the first criterion, and has a seller score that satisfies the second criterion;

providing, via the computer system, for display to the user:

a perceptible distinction with respect to the distinguished seller;

*a price at which the distinguished seller is offering the item; and
a shopping cart control that, when activated, adds the item to a shopping
cart associated with the user.*

The Final Office Action rejected claim 58 collectively with claim 3, utilizing the same rationale. Appellant therefore respectfully maintains that at least for the reasons discuss above with respect to claim 3, the rejection of claim 58 is improper. In particular, the rejection of claim 58 is improper at least because Miller, English, Chopra, and Hartman do not teach or render obvious the following features of claim 58 in the context of the other recitations of the claim:

*among a plurality of sellers, identifying, using the computer system, those that
are:*

offering the item for sale;

have an availability level that satisfies a first criterion;

*have a seller score relating to a plurality of different items offered for sale by the
seller that satisfies a second criterion;*

*selecting among the identified sellers, using the computer system, as a
distinguished seller a seller that is offering the item at a lowest price, offering the item
for sale, has an availability level that satisfies the first criterion, and has a seller score
that satisfies the second criterion*

In connection with the foregoing features, the Final Office Action alleges, at page 5, that Miller, at Fig. 11 and ¶¶ 0176-0179, discloses the features of selecting via the computer system as the featured seller of the item, from the sellers identified among the plurality of sellers, the identified seller that is offering the selected item at the lowest price. However, the Final Office Action has mischaracterized Miller as Miller lacks the foregoing feature, as discussed above with respect to claim 3. The only reference to price in ¶¶ 0176-0179 of Miller is as follows:

[0178] Preferably, the criteria for selecting the vendor includes at least one of price, proximity to the vendor, availability of delivery, whether the products are in stock, wrapping availability, shipping availability, tracking availability, and a loyalty program.

[0179] As an option, an availability and price of the products at each of a plurality of vendors are determined summaries are output.

Thus, the foregoing citation mentions that price may be used as one of the criteria used in selecting a vendor, but the citation completely fails to disclose, for example, selecting as a featured seller the seller that is offering the selected item at the lowest price, as alleged by the Final Office Action. Indeed, the citation to Miller fails to even mention identifying a seller offering an item at the lowest price.

Further, the Final Office Action admits that Miller fails to disclose the features of identifying sellers that have a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold. However, the Final Office Action relies on English, ¶ 0061, to supply the foregoing feature. The Final Office Action also asserts that it would have been obvious to add this feature to Miller's identification of sellers. Appellant respectfully disagrees.

With respect to a seller score relating to a plurality of different items, English, ¶ 0061, recites:

*[0062] If desired, instead of a binary, thumbs up/thumbs down rating, the system could enable users to provide a rating on a scale, such as from 1-10, or A-F. In such a case, the system could provide information about alternative vendors when the rating is below a certain threshold level; or **could provide information of alternate vendors that provide the same (or similar) product**, but with higher user ratings than the current vendor. In this variation, the referral software 460 operates as before, but takes into account **a stored aggregate rating of the current vendor**, so as to select only alternative vendors with a higher aggregate rating. For example, if the current vendor has **an aggregate rating (based on ratings from many users)** of 7.5 (on a 1-10 scale), then the referral software 460 can limit its search to vendors with an aggregate rating greater than 7.5. ... (emphasis added)*

Thus, as similarly discussed above with respect to claim 3, it is evident from the bolded and underlined text above, the "aggregate rating" of English is an aggregate of the ratings of many users, **not a seller score relating to a plurality of different items** offered for sale by the seller, as alleged. Consequently, even if, *arguendo*, this feature of English were added to Miller, the resulting instructions would not identify a seller having a seller score relating to a plurality of different items offered for sale by the seller that satisfied a second criterion, and so would not operate as described in claim 58.

Further, the Final Office Action, at page 7, admits that the combination of Miller and English fails to disclose identifying a seller based on the lowest price (contradicting the

allegation earlier made by the Final Office Action, that Miller discloses identifying a seller based on the lowest price). Nonetheless, the Final Office Action relies on Chopra to supply the features missing from Miller and English, alleging:

Chopra teaches a method for providing lowest cost purchasing including identifying a seller based on the lowest price (§ 0023-0026) and wherein the user does not navigate to the featured seller Web site to complete the purchase from the featured seller but orders it directly from the website (§ 0029).threshold (§0062 - note the score is the aggregate rating and the predetermined threshold is the current vendor aggregate rating).

However, even assuming that the score of English were included in the criteria of Miller, and even further assuming that Chopra disclosed identifying a seller offering the lowest price for an item, the result would lack the feature of *first* performing an identification of sellers of an item using a set of criteria, and *then* selecting a featured seller from those identified sellers using lowest price for the item.

The Final Office Action fails to even discuss or acknowledge that the order in which criteria are used to identify sellers and to select a featured seller can alter which seller is selected as a featured seller. Indeed, the Final Office Action fails to even provide a rational as to why the combination of Miller, English, Chopra, and Hartman should be modified to *first* identify sellers of an item using a set of criteria, and *then* select a featured seller from those identified sellers using lowest price for the item (rather than, for example, first identify sellers using lowest price for the item and then using a set of criteria to select from identified sellers a featured seller).

Chopra states that its “invention relates to systems and methods for receiving orders for products and/or services, searching source or vendor databases to locate the lowest prices for those products and/or services”. Thus, using the combination of Miller, English, Chopra, and Hartman, if the method of Chopra were used to identify the lowest cost vendors, and the criteria of Miller and English were then used to select a featured seller from the lowest cost vendors, a different vendor would be identified as a featured seller as compared to the featured seller that would be selected via the claimed method (e.g., where the sellers are first identified based on availability levels and seller scores, and from the identified sellers a featured seller is selected based on lowest item price).

Because the Final Office Action fails to address the order in which criteria are used to perform the identification and selection, and further fails to provide a rational to modify the combination of Miller, English, Chopra, and Hartman to *first* identify sellers of an item using a set of criteria, and *then* select a featured seller from those identified sellers using lowest price for the item, the Final Office Action has failed to make a prima facie case of obviousness.

In addition, the Final Office Action fails to articulate, for example how the combination of Miller, English, Chopra, and Hartman would result “in an improved method that would allow for customers to get the information they desire regarding price,” as alleged by the Final Office Action, or even mention what types of information a customer desires.

In response to a similar discussion provided in Appellant’s June 25, 2009 Communication, the Final Office Action (at page 19), alleges that “applicant’s arguments are effectively against the references individually, and one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.” However, Appellant is not arguing against the references individually. Instead, Appellant is pointing out that even if the disclosure of the individual references are combined as set forth in the Final Office Action, the combination of Miller, English, Chopra, and Hartman still fails to teach or suggest the invention as defined by claim 58 as a whole. The Final Office Action fails apply the correct legal standard in making a determination of obviousness, because the Final Office Action fails to consider the claim as a whole. As stated in M.P.E.P. 2141.02: “In determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious.” (Emphasis original, citations omitted.)

Thus, in the present case, the Final Office Action cannot meet its burden under 35 U.S.C. § 103 by merely showing that the relevant claim features missing from Miller (identifying sellers that have a seller score relating to a plurality of different items that exceeds a score threshold; identifying a seller offering the lowest price) are allegedly disclosed respectively in English, Chopra and Hartman. Rather, the Final Office Action must establish that it would have been obvious to incorporate the features of English, Chopra and Hartman into Miller in the manner set forth in claim 58. As explained above, the Final Office Action fails to meet that burden.

Given these differences between claim 58 and the asserted combination of Miller and English, Chopra and Hartman, and the lack of a clear articulation of the reasons why the claimed invention would still be obvious, the Final Office Action does not establish a prima facie case of obviousness with respect to claim 58. See MPEP § 2142 (stating that “the key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious.”).

For at least these reasons, the rejection of independent claim 58 is improper.

Independent Claim 8

Independent claim 8 reads as follows:

A computer readable medium comprising a page definition data structure and instructions which when executed by a processor are configured to display:
content specifying the display of information describing a selected item;
and

content specifying the display of a shopping cart control that may be activated to add the selected item to a shopping cart to enable the ordering of the selected item from a distinguished one of a plurality of sellers, wherein items from multiple sellers can be added to the shopping cart, the distinguished seller being selected by offering the selected item for sale at the lowest price among those sellers of the plurality (1) that are offering the item for sale, (2) whose availability level for the selected item exceed a predetermined availability threshold, and (3) having a seller score that exceeds a predetermined score threshold.

In rejecting claim 8, the Final Office Action relies on the rationale for rejecting claim 3, and further relies on Miller, Figs 2, 6 and 7 and ¶¶ 009, 0148-0159 discussing a program to create a web page for the function enumerated. Appellant therefore respectfully maintains that at least for the reasons discuss above with respect to claim 3, the rejection of claim 8 is improper. In particular, the rejection of claim 8 is improper at least because Miller, English, Chopra, and Hartman do not teach or render obvious the following features of claim 8 in the context of the other recitations of the claim:

content specifying the display of a shopping cart control that may be activated to add the selected item to a shopping cart to enable the ordering of the selected item from a

distinguished one of a plurality of sellers, wherein items from multiple sellers can be added to the shopping cart, the distinguished seller being selected by offering the selected item for sale at the lowest price among those sellers of the plurality (1) that are offering the item for sale, (2) whose availability level for the selected item exceed a predetermined availability threshold, and (3) having a seller score that exceeds a predetermined score threshold;

In connection with the foregoing features, the Final Office Action alleges, at page 5, that Miller, at Fig. 11 and ¶¶ 0176-0179, discloses the features of selecting via the computer system as the featured seller of the item, from the sellers identified among the plurality of sellers, the identified seller that is offering the selected item at the lowest price. However, the Final Office Action has mischaracterized Miller as Miller lacks the foregoing feature, as discussed above with respect to claim 3. The only reference to price in ¶¶ 0176-0179 of Miller is as follows:

[0178] Preferably, the criteria for selecting the vendor includes at least one of price, proximity to the vendor, availability of delivery, whether the products are in stock, wrapping availability, shipping availability, tracking availability, and a loyalty program.

[0179] As an option, an availability and price of the products at each of a plurality of vendors are determined summaries are output.

Thus, the foregoing citation mentions that price may be used as one of the criteria used in selecting a vendor, but the citation completely fails to disclose, for example, selecting as a featured seller the seller that is offering the selected item at the lowest price, as alleged by the Final Office Action. Indeed, the citation to Miller fails to even mention identifying a seller offering an item at the lowest price.

Further, the Final Office Action admits that Miller fails to disclose the features of identifying sellers that have a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold. However, the Final Office Action relies on English, ¶ 0061, to supply the foregoing feature. The Final Office Action also asserts that it would have been obvious to add this feature to Miller's identification of sellers. Appellant respectfully disagrees.

With respect to a score threshold, English, ¶ 0061, recites:

[0062] If desired, instead of a binary, thumbs up/thumbs down rating, the system could enable users to provide a rating on a scale, such as from 1-10, or A-F. In such a

case, the system could provide information about alternative vendors when the rating is below a certain threshold level; or could provide information of alternate vendors that provide the same (or similar) product, but with higher user ratings than the current vendor. In this variation, the referral software 460 operates as before, but takes into account a stored aggregate rating of the current vendor, so as to select only alternative vendors with a higher aggregate rating. For example, if the current vendor has an aggregate rating (based on ratings from many users) of 7.5 (on a 1-10 scale), then the referral software 460 can limit its search to vendors with an aggregate rating greater than 7.5. ... (emphasis added)

Thus, as similarly discussed above with respect to claim 3, it is evident from the bolded and underlined text above, the “aggregate rating” of English is an aggregate of the ratings of many users, not a seller score relating to a plurality of different items offered for sale by the seller, as alleged. Consequently, even if, *arguendo*, this feature of English were added to Miller, the resulting instructions would not identify a seller having a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold, and so would not operate as described in claim 8.

Further, the Final Office Action, at page 7, admits that the combination of Miller and English fails to disclose identifying a seller based on the lowest price (contradicting the allegation earlier made by the Final Office Action, that Miller discloses identifying a seller based on the lowest price). Nonetheless, the Final Office Action relies on Chopra to supply the features missing from Miller and English, alleging:

Chopra teaches a method for providing lowest cost purchasing including identifying a seller based on the lowest price (¶¶ 0023-0026) and wherein the user does not navigate to the featured seller Web site to complete the purchase from the featured seller but orders it directly from the website (¶ 0029).threshold (¶0062 - note the score is the aggregate rating and the predetermined threshold is the current vendor aggregate rating).

However, even assuming that the score of English were included in the criteria of Miller, and even further assuming that Chopra disclosed identifying a seller offering the lowest price for an item, the result would lack the feature of *first* performing an identification of sellers of an item using a set of criteria, and *then* selecting a featured seller from those identified sellers using lowest price for the item.

The Final Office Action fails to even discuss or acknowledge that the order in which criteria are used to identify sellers and to select a featured seller can alter which seller is selected

as a featured seller. Indeed, the Final Office Action fails to even provide a rational as to why the combination of Miller, English, Chopra, and Hartman should be modified to *first* identify sellers of an item using a set of criteria, and *then* select a featured seller from those identified sellers using lowest price for the item (rather than, for example, first identify sellers using lowest price for the item and then using a set of criteria to select from identified sellers a featured seller).

Chopra states that its “invention relates to systems and methods for receiving orders for products and/or services, searching source or vendor databases to locate the lowest prices for those products and/or services”. Thus, using the combination of Miller, English, Chopra, and Hartman, if the method of Chopra were used to identify the lowest cost vendors, and the criteria of Miller and English were then used to select a featured seller from the lowest cost vendors, a different vendor would be identified as a featured seller as compared to the featured seller that would be selected via the claimed computer readable medium (e.g., where the sellers are first identified based on availability levels and seller scores, and from the identified sellers a featured seller is selected based on lowest item price).

Because the Final Office Action fails to address the order in which criteria are used to perform the identification and selection, and further fails to provide a rational to modify the combination of Miller, English, Chopra, and Hartman to *first* identify sellers of an item using a set of criteria, and *then* select a featured seller from those identified sellers using lowest price for the item, the Final Office Action has failed to make a prima facie case of obviousness.

In addition, the Final Office Action fails to articulate, for example how the combination of Miller, English, Chopra, and Hartman would result “in an improved method that would allow for customers to get the information they desire regarding price,” as alleged by the Final Office Action, or even mention what types of information a customer desires.

In response to a similar discussion provided in Appellant’s June 25, 2009 Communication, the Final Office Action (at page 19), alleges that “applicant’s arguments are effectively against the references individually, and one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.” However, Appellant is not arguing against the references individually. Instead, Appellant is pointing out that even if the disclosure of the individual references are combined as set forth in the Final Office Action, the combination of Miller, English, Chopra, and Hartman still fails to teach or

suggest the invention as defined by claim 8 as a whole. The Final Office Action fails apply the correct legal standard in making a determination of obviousness, because the Final Office Action fails to consider the claim as a whole. As stated in M.P.E.P. 2141.02: "In determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious." (Emphasis original, citations omitted.)

Thus, in the present case, the Final Office Action cannot meet its burden under 35 U.S.C. § 103 by merely showing that the relevant claim features missing from Miller (identifying sellers that have a seller score relating to a plurality of different items that exceeds a score threshold; identifying a seller offering the lowest price) are allegedly disclosed respectively in English, Chopra and Hartman. Rather, the Final Office Action must establish that it would have been obvious to incorporate the features of English, Chopra and Hartman into Miller in the manner set forth in claim 8. As explained above, the Final Office Action fails to meet that burden.

Given these differences between claim 8 and the asserted combination of Miller and English, Chopra and Hartman, and the lack of a clear articulation of the reasons why the claimed invention would still be obvious, the Final Office Action does not establish a prima facie case of obviousness with respect to claim 8. See MPEP § 2142 (stating that "the key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious.").

For at least these reasons, the rejection of independent claim 8 is improper.

Dependent Claim 4

Claim 4 depends from claim 3, and adds the following:

wherein the identifying those (1) that are offering the item for sale, (2) whose availability level for the item exceeds a predetermined availability threshold, and (3) having a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold, and the selecting as the featured seller of the item, from the sellers identified among the plurality of sellers, the identified seller that is offering the item at the lowest price are performed before the receiving the request for information about the item from the user

The rejection of claim 4 is improper in view of the claim's dependency from claim 3, and is also improper because Miller, English, Chopra, Hartman, and Das do not disclose or suggest the features recited in claim 4.

The Final Office Action admits that the combination of Miller, English, Chopra, and Hartman fails to disclose the feature of “selecting of the featured seller before receiving the request for information from the user.” Nonetheless, the Final Argument argues that:

Das teaches a method and system for automatically making operations decisions including the known technique of selecting as a featured seller from identified sellers the seller offering the item at the lowest price before receiving a request for information from a user (¶¶0079 and 0104 - note that the sellers' prices and selection of sellers based on rules are performed before any request and stored in the databases). This known techniques is applicable to the method of Miller/English/Chopra/Hartman as they all share characteristics and capabilities, namely they are directed to providing information and facilitating purchases.

However, Miller (¶ 0179), which teaches that “the process is repeated in real time each time a product identifier is received from the user” teaches away from the modification of Miller (“selecting of the featured seller before receiving the request for information from the user.”) with the alleged disclosure of Das proposed by the Final Office Action. It is improper to combine references where the references teach away from their combination. In re Grasselli, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983).

With respect to the rejection of claim 4 under 35 USC § 112, first paragraph, the Final Office Action states, at pages 4-5, that:

Regarding claim 4, the specification does not provide adequate support for the limitation "the identifying those (1) that are offering the item for sale, (2) whose availability level for the item exceeds a predetermined availability threshold, and (3) having a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold, and the selecting as the featured seller of the item, from the sellers identified among the plurality of sellers, the identified seller that is offering the item at the lowest price are performed before the receiving the request for information about the item from the user." The specification provides at ¶0032 for storing ratings of sellers and recommendations based those rating, but does provide support for having the featured seller based on offering an item for sale, having availability of the item, and a seller score exceeding a level before receiving a user request for an item. Furthermore, Figure 8 shows that the steps of identifying based on offering, availability and score and selecting from the identified sellers are performed after receiving a user request.

In rejecting claim 4 under 35 USC § 112, first paragraph, the Final Office Action has failed to perform the proper analysis to determine whether the specification provides support for the feature “determining a most recently selected featured seller, where the most recently selected

featured seller was selected using the acts of identifying those (1) that are offering the item for sale, (2) whose availability level for the item exceeds a predetermined availability threshold, and (3) having a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold ...,” and therefore has failed to meet its burden.

Under *In re Bowen*, 492 F.2d 859, 862-63 (CCPA 1974), the minimal requirement is for the examiner to give reasons for the uncertainty of the enablement (see, MPEP § 2100). The analysis and conclusion of a lack of enablement must be based on the factors discussed in MPEP § 2164.01(a) and the evidence as a whole (MPEP 2100). Further, the language of the rejection must “focus on those factors, reasons, and evidence that lead the examiner to conclude that the specification fails to teach how to make and use the claimed invention without undue experimentation, or that the scope of any enablement provided to one skilled in the art is not commensurate with the scope of protection sought by the claims” (MPEP § 2100).

MPEP § 2100 further requires that the examiner should specifically identify what information is missing and why one skilled in the art could not supply the information without undue experimentation. See MPEP § 2164.06(a). “References should be supplied if possible to support a *prima facie* case of lack of enablement, but are not always required. In *re Marzocchi*, 439 F.2d 220, 224, 169 USPQ 367, 370 (CCPA 1971). However, **specific technical reasons are always required.**” (*id.*, emphasis added).

Whether experimentation is “undue” is determined based on the following eight *Wands* factors:

1. Breadth of the claims;
2. Nature of the invention;
3. State of the prior art;
4. Level of ordinary skill in the art;
5. Predictability of the art;
6. Amount of direction provided in the specification;
7. Any working examples; and
8. Quantity of experimentation needed relative to the disclosure.

(MPEP 2164.01(a), citing *In re Wands*, 858 F.2d 731, 737 (Fed. Cir. 1988)).

A proper analysis of whether any experimentation is undue **requires an analysis of all of the Wands factors.** (MPEP § 2164.01(a)). It is improper to conclude that a disclosure is not enabling based on an analysis of only one of the above factors while ignoring one or more of the others. (Id.).

The amount of guidance or direction needed to satisfy the enablement requirement is inversely related to the amount of knowledge in the state of the art as well as the predictability in the art. (MPEP § 2164.03). Thus, the question of enablement is one of predictability in view of what is known in the art.

Further, MPEP § 706.03 explains: “Where a major technical rejection is proper (e.g., lack of proper disclosure, undue breadth, utility, etc.) such rejection should be stated with a full development of the reasons rather than by a mere conclusion coupled with some stereotyped expression.” (MPEP § 706.03)

Only after the examiner has weighed all the evidence and established a reasonable basis to question the enablement provided for the claimed invention, does the burden fall on Appellant to present persuasive arguments, supported by suitable proofs where necessary, that one skilled in the art would be able to make and use the claimed invention using the application as a guide. (MPEP § 2164.05). The evidence provided by Appellant need not be conclusive but merely convincing to one skilled in the art. (Id.).

Because the Final Office Action has failed to articulate a full development of the reasons for the rejection under 35 USC § 112, first paragraph, and does not appear to have conducted an analyses as required under the Wands factors, the Final Office Action has failed to meet its burden in rejecting claim 4. Missing, for example, is any discussion of even a single Wands factor or any indication that any evidence has been weighed, as the MPEP expressly requires. (MPEP § 2164.01(a)). Indeed, the rejection is devoid of any evidence or technical reasons as to why the disclosure fails to enable the claimed invention. Rather, the provided “reason” is a mere conclusion, which the MPEP expressly warns is insufficient to support this rejection. (MPEP §§ 706.03, 2164.05).

The Final Office Action’s failure to meet its burden to articulate a “reasonable basis” challenging the enablement of claim 4 alone is fatal to this rejection since Appellant is under no burden to rebut it. (MPEP §§ 706.03, 2164.05).

Further, the Appellant respectfully maintains that the foregoing feature is fully supported by the disclosure of the present application (*see*, e.g., ¶¶ [0026]-[0032]; Figs.6-8).

For at least these reasons, the rejection of dependent claim 4 is improper.

Dependent Claim 5

Claim 5 depends from claim 3, and adds the following:

*wherein the identifying and selecting is performed at a uniform time interval,
the method further comprising determining a most recently selected featured seller, where the most recently selected featured seller was selected using the acts of identifying those (1) that are offering the item for sale, (2) whose availability level for the item exceeds a predetermined availability threshold, and (3) having a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold, and selecting as the featured seller of the item, from the sellers identified among the plurality of sellers, the identified seller that is offering the item at the lowest price; and*

wherein the most recently selected featured seller is used to reply to each of a plurality of received requests

The rejection of claim 5 is improper in view of the claim's dependency from claim 3, and is also improper because Miller, English, Chopra and Hartman do not disclose or suggest the features recited in claim 5.

The Final Office Action alleges, at page 8, that Miller, ¶ 0179, discloses the feature of "wherein the identifying and selecting is performed at a uniform time interval." However, the Final Office Action has mischaracterized Miller, ¶ 0179, which recites:

As an option, an availability and price of the products at each of a plurality of vendors are determined summaries are output. Also optionally, a promotional offer can be output with the information about the selected vendor. Preferably, the process is repeated in real time each time a product identifier is received from the user. (emphasis added)

It is evident from the bolded and underlined text above, that the processes of Miller is repeated *whenever a product identifier is received from a user*. Consequently, Miller *performs its process in response to each user request for the product rather than based on time*. Thus, if the process of Miller received a first product identifier request, then 5 minutes later received a second product identifier request, and then 13 minutes received a third product identifier request,

the process of Miller would be performed in response to each request, although the requests are spaced apart by non-uniform time intervals.

The Final Office Action, at page 21, alleges that the phrase “uniform time interval” does not preclude the reasonable interpretation of being each time a user request is received. However, the Final Office Action interpretation is not reasonable, as the term “interval” is plainly understood to refer to an amount of time between events, and so the term “uniform time interval” is plainly understood to refer to a uniform interval of time. The interpretation proposed by the Final Office Action improperly disregards the concept of time in the temporal sense by taking the position that, under the claim language, the identifying and selecting can be performed at non-uniform time intervals even though the claim recites “uniform time interval.” The words of a claim must be given their “plain meaning” unless such meaning is inconsistent with the specification. In re Zletz, 893 F.2d 319 (Fed. Cir. 1989). Here, the Final Office Action improperly fails to give the phrase “uniform time interval” its plain meaning.

The Final Office Action further alleges that Miller, at ¶¶0175, 0188, and English, at ¶ 0062, discloses the features of determining a most recently selected featured seller by using the acts of identifying those offering the item for sale, having availability above a threshold, and having a rating above a threshold, wherein the most recently selected featured seller is used in replying to each of a plurality of received requests.

Paragraphs 0175 and 0188 of Miller respectively disclose that a vendor is selected by the vendor paying a fee and that a user can select a shop based on price. English, ¶ 0062, discloses allowing users to rate vendors, and providing a user with information about alternative vendors of a product when the user rating is below a certain threshold level or when the alternate vendors have higher user ratings. English further discloses taking into account a stored aggregate user rating of the current vendor, so as to select only alternative vendors with a higher aggregate user rating. No mention is made in either citation regarding determining a most recently selected featured seller based on availability levels and scores.

Claim 5, which depends from independent claim 3, determines “a most recently selected featured seller” wherein the featured seller was selected from item sellers having availability levels and seller scores that satisfy corresponding thresholds, and identifying which of those sellers offers the lowest price. It is apparent from the above discussion of paragraphs 0175 and

0188 of Miller and paragraph 062 of English that the “selected” seller of Miller and the selected vendor of English are not a “most recently selected featured seller” selected from item sellers having availability levels and seller scores that satisfy corresponding thresholds, and identifying which of those sellers offers the lowest price.

Consequently, even if, *arguendo*, the feature of English were added to Miller, the resulting method would not determine a most recently selected featured seller selected using the acts of identifying those (1) that are offering the item for sale, (2) whose availability level for the item exceeds a predetermined availability threshold, and (3) having a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold.

With respect to the rejection of claim 5 under 35 USC § 112, first paragraph, the Final Office Action states, at pages 4-5, that:

Regarding claim 5, the specification does not provide adequate support for the limitation "determining a most recently selected featured seller, where the most recently selected featured seller was selected using the acts of identifying those (1) that are offering the item for sale, (2) whose availability level for the item exceeds a predetermined availability threshold, and (3) having a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold..." The specification provides at ¶0031 for having a seller as the presently designated recommended seller, i.e. most recently featured seller, based on seller score but does not provide support for selecting that seller based on offering the item for sale.

In rejecting claim 5 under 35 USC § 112, first paragraph, the Final Office Action has failed to perform the proper analysis to determine whether the specification provides support for the feature “determining a most recently selected featured seller, where the most recently selected featured seller was selected using the acts of identifying those (1) that are offering the item for sale, (2) whose availability level for the item exceeds a predetermined availability threshold, and (3) having a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold” and therefore has failed to meet its burden.

Under *In re Bowen*, 492 F.2d 859, 862-63 (CCPA 1974), the minimal requirement is for the examiner to give reasons for the uncertainty of the enablement (see, MPEP § 2100). The analysis and conclusion of a lack of enablement must be based on the factors discussed in MPEP § 2164.01(a) and the evidence as a whole (MPEP 2100). Further, the language of the rejection

must “focus on those factors, reasons, and evidence that lead the examiner to conclude that the specification fails to teach how to make and use the claimed invention without undue experimentation, or that the scope of any enablement provided to one skilled in the art is not commensurate with the scope of protection sought by the claims” (MPEP § 2100).

MPEP § 2100 further requires that the examiner should specifically identify what information is missing and why one skilled in the art could not supply the information without undue experimentation. See MPEP § 2164.06(a). “References should be supplied if possible to support a prima facie case of lack of enablement, but are not always required. In re Marzocchi, 439 F.2d 220, 224, 169 USPQ 367, 370 (CCPA 1971). However, **specific technical reasons are always required.**” (id., emphasis added).

Whether experimentation is “undue” is determined based on the following eight Wands factors:

1. Breadth of the claims;
2. Nature of the invention;
3. State of the prior art;
4. Level of ordinary skill in the art;
5. Predictability of the art;
6. Amount of direction provided in the specification;
7. Any working examples; and
8. Quantity of experimentation needed relative to the disclosure.

(MPEP 2164.01(a), citing In re Wands, 858 F.2d 731, 737 (Fed. Cir. 1988)).

A proper analysis of whether any experimentation is undue **requires an analysis of all of the Wands factors.** (MPEP § 2164.01(a)). It is improper to conclude that a disclosure is not enabling based on an analysis of only one of the above factors while ignoring one or more of the others. (Id.).

The amount of guidance or direction needed to satisfy the enablement requirement is inversely related to the amount of knowledge in the state of the art as well as the predictability in the art. (MPEP § 2164.03). Thus, the question of enablement is one of predictability in view of what is known in the art.

Further, MPEP § 706.03 explains: “Where a major technical rejection is proper (e.g., lack of proper disclosure, undue breadth, utility, etc.) such rejection should be stated with a full development of the reasons rather than by a mere conclusion coupled with some stereotyped expression.” (MPEP § 706.03)

Only after the examiner has weighed all the evidence and established a reasonable basis to question the enablement provided for the claimed invention, does the burden fall on Appellant to present persuasive arguments, supported by suitable proofs where necessary, that one skilled in the art would be able to make and use the claimed invention using the application as a guide. (MPEP § 2164.05). The evidence provided by Appellant need not be conclusive but merely convincing to one skilled in the art. (Id.).

Because the Final Office Action has failed to articulate a full development of the reasons for the rejection under 35 USC § 112, first paragraph, and does not appear to have conducted an analyses as required under the Wands factors, the Final Office Action has failed to meet its burden in rejecting claim 5. Missing, for example, is any discussion of even a single Wands factor or any indication that any evidence has been weighed, as the MPEP expressly requires. (MPEP § 2164.01(a)). Indeed, the rejection is devoid of any evidence or technical reasons as to why the disclosure fails to enable the claimed invention. Rather, the provided “reason” is a mere conclusion, which the MPEP expressly warns is insufficient to support this rejection. (MPEP §§ 706.03, 2164.05).

The Final Office Action’s failure to meet its burden to articulate a “reasonable basis” challenging the enablement of claim 5 alone is fatal to this rejection since Appellant is under no burden to rebut it. (MPEP §§ 706.03, 2164.05).

Further, the Appellant respectfully maintains that the foregoing feature is fully supported by the disclosure of the present application (*see, e.g.,* ¶¶ [0026]–[0032]; Figs.6–8).

For at least these reasons, the rejection of dependent claim 5 is improper.

Dependent Claim 9

Claim 9 depends from claim 8, and adds the following: “wherein the data structure further comprises contents specifying the display of the control that may be activated to display ordering controls that may be activated to order the selected item from a different one of the plurality of sellers other than the distinguished seller.” The rejection of claim 9 is improper in

view of the claim's dependency from claim 8, and is also improper because Miller, English, Chopra and Hartman do not disclose or suggest the feature recited in claim 9.

The Final Office Action improperly fails to address the features recited in claim 9. *See* M.P.E.P. § 2143.03 ("All words in a claim must be considered in judging the patentability of that claim against the prior art."). Instead, the Final Office Action appears to rely on the analysis of claim 8, which in turn relies on the analysis of claim 3. However, claim 3 fails to recite the features of claim 9, and the rejection of claim 3 fails to address the features of claim 9. Therefore, the Final Office Action has failed to make a *prima facie* case of obviousness with respect to claim 9.

For at least these reasons, the rejection of claim 9 is improper.

Dependent Claim 10

Claim 10 depends from claim 8, and recites the following:

The computer readable medium of claim 8 wherein the data structure further contains contents specifying the display of one or more secondary controls that may be activated to order the selected item from a different one of the plurality of sellers other than the distinguished seller, wherein the control for the distinguished seller is displayed more prominently than the secondary controls.

The rejection of claim 10 is improper in view of the claim's dependency from claim 8, and is also improper because Miller, English, Chopra and Hartman do not disclose or suggest the feature recited in claim 10.

While the Final Office Action admits that Miller, English, Chopra, and Hartman fail to disclose that the control for the distinguished seller is displayed more prominently than the secondary controls, the Final Office Action argues that this difference is only found in the nonfunctional descriptive material and is not functionally involved in the functions of specifying the display of secondary controls recited.

This Final Office Action does not accurately reflect the legal standard. As discussed in MPEP Section 2106.01, a computer that recognizes a particular grouping or sequence of musical notes read from memory and thereafter causes another defined series of notes to be played, requires a functional interrelationship among that data and the computing processes performed when utilizing that data. Similarly, in the present case, there is a functional interrelationship

among the content and the processes performed when utilizing that content as the data structure includes specifications for the processor to carry out (e.g. displaying the control for the distinguished seller more prominently than the secondary controls).

Further, the Final Office Actions notes that claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. Appellant respectfully notes that claim 10 claims a structure that is different than Miller, English, Chopra and Hartman. For example, claim 10 claims a computer readable medium having a data structure stored thereon which differs from any computer readable medium of Miller, as Miller fails to disclose a computer readable medium that contains a data structure whose contents specify the display of one or more secondary controls that may be activated to order the selected item from a different one of the plurality of sellers other than the distinguished seller, wherein the control for the distinguished seller is displayed more prominently than the secondary controls.

Further, in response to Appellant's arguments, the Final Office Action alleges, at page 21, that:

The structure of Miller is capable of displaying controls more prominently, i.e. in bold such as for the featured seller, and the display of secondary controls would be performed in the same manner regardless of the display.

However, the foregoing conclusory statement is totally unsupported by the disclosure of Miller as Miller makes no reference to being able to any ability to display secondary controls that may be activated to order the selected item from a different one of the plurality of sellers other than the distinguished seller, wherein the control for the distinguished seller is displayed more prominently than the secondary controls.

For at least these reasons, the rejection of claim 10 is improper.

Dependent Claims 33, 45, and 59

The Final Office Action collectively rejected dependent claims 33, 45, and 59. claims 33, 45, and 59 correspondingly depend from claims 3, 7, and 58. The rejection of claims 33, 45, and 59 is improper in view of the claims' respective dependencies from claims 3, 7, and 58, and is also improper because Miller, English, Chopra and Hartman do not disclose or suggest the features recited in claims 33, 45, and 59.

In particular, the references relied on by the Final Office Action fail to teach or suggest

that the featured seller is visually emphasized on the web page with respect to other sellers identified on the web page.

In rejecting claims 33, 45, and 59, the Final Office Action relies on Figure 5A of Miller and English, ¶ 074. With respect to Figure 5A of Miller, the Final Office Action alleges that Office Max as a local seller is visually identified in a separate box that emphasizes Office Max. However, rather than emphasize a seller selected by identifying sellers based on criteria enumerated in the independent claims, and then performing a selection of the identified sellers by selecting as a featured seller an identified seller offering the item at the lowest price, Figure 5A of Miller discloses that the local seller is identified in a separate box. Figure 5A of Miller does not disclose emphasizing a seller selected from a plurality of sellers meeting certain criteria, where the selected sellers offers the item at the lowest price with respect to plurality of sellers meeting certain criteria.

This deficiency of Miller is not satisfied by English. English, ¶ 074, discloses a vendor pays to receive a preferential placement, rather than visually emphasizing a seller selected by identifying sellers based on criteria enumerated in the independent claims, and then performing a selection of sellers identified among the plurality of sellers by selecting as a featured seller an identified seller offering the item at the lowest price. Thus, the combination of Miller, English, Chopra, and Hartman fails to teach or suggest each element of claims 33, 45, and 59.

For at least these reasons, the rejection of dependent claims 33, 45, and 59 is improper.

Dependent Claims 34-39, 46-51 and 61-65

The Final Office Action collectively rejected dependent claims 34-39, 46-51 and 61-65. claims 34-39, 46-51; and 61-65 correspondingly depend from claims 3, 7, and 58. The rejection of claims 34-39, 46-51; and 61-65 is improper in view of the claims' respective dependencies from claims 3, 7, and 58, and is also improper because Miller, English, Chopra, Hartman and Callender do not disclose or suggest the features recited in claims 34-39, 46-51 and 61-65.

The Final Office Action admits that Miller, English, Chopra and Hartman fail to disclose "the availability threshold being settable to different values and settable to a time period corresponding to a plurality of days."

Nonetheless, the Final Office Action alleges that:

Callender teaches a method, system and program for determining item availability including the known technique of setting an availability threshold to a time period

corresponding to a number of days (Fig. 7 and ¶¶0006, 0007, 0026 and 0027 - note that the time period is today, tomorrow, etc., i.e. the number of days can be one (today), two (tomorrow) etc., for determining availability). This known technique is applicable to the method of Miller/English/Chopra/Hartman as they all share characteristics and capabilities, namely they are all directed to providing information to buyers and purchasing products. One of ordinary skill in the art would have recognized that applying the known technique of Callender would have yielded predictable results and resulted in an improved method.

Appellant notes that the Final Office Action is relying on the alleged threshold of English to satisfy the feature of a “score threshold” with respect to the rejection of the independent claims (see, e.g., claim 3). If one were to further modify the combination of Miller, English, Chopra and Hartman so that the threshold of English is now a time period threshold instead of a score threshold, than the combination of Miller, English, Chopra, Hartman, and Callender would fail to provide the “score threshold” feature and so could not render the claims obvious.

Still further, the Final Office Action has mischaracterized Callender. The Callender citations relied upon by the Final Office Action lack any disclosure of a threshold, much less an availability threshold. The Callender citations are instead directed to determining a probability related to when an item will be available for purchase at a store (“For example, retailer A has a 90% probability of having 2 units in stock today at location X and an 80% probability of having 1 unit in stock tomorrow at location Y.”, Callender, [0027]). No threshold is disclosed, only example calculated probabilities.

In response to Appellant’s arguments, the Final Office Action responds by stating:

Callender teaches the teaching of having the availability threshold settable to different values and corresponding to a time period. Second, applicant has not provided a specific definition of “threshold” and as such, the term is given its broadest reasonable interpretation. Such as interpretation includes the above one.

However, the Final Office Action has not provided any interpretation of the phrase “threshold” other than conclusory stating that the disclosure of Callender includes a threshold. Under no reasonable interpretation can the calculation of a probability of having a unit in stock be considered a threshold because such a calculation does not, for example, provide a point that needs to be met or exceeded to begin producing a given effect or result or to elicit a response. The words of a claim must be given their “plain meaning” unless such meaning is inconsistent

with the specification. In re Zletz, 893 F.2d 319 (Fed. Cir. 1989). Here, the Final Office Action improperly fails to give the phrase “threshold” its plain meaning.

Thus, the combination of Miller, English, Chopra, Hartman and Callender fail to teach or suggest each element of claims 34-39, 46-51 and 61-65.

Dependent Claims 40, 41, 52, 53, 66 and 67

The Final Office Action collectively rejected dependent claims 40, 41, 52, 53, 66 and 67. Claims 40, 41; 52, 53; 66, and 67 correspondingly depend from claims 3, 7, and 58. The rejection of claims 40, 41; 52, 53; 66, and 67 is improper in view of the claims’ respective dependencies from claims 3, 7, and 58, and is also improper because Miller, English, Chopra and Hartman do not disclose or suggest the features recited in claims 40, 41, 52, 53, 66 and 67.

The citations relied on by the Final Office Action fail to teach or suggest providing a first plurality of ordering controls corresponding to at least a portion of the plurality of sellers, wherein activation of any of the plurality of controls will cause the item to be added to the same shopping cart as recited by claim 40, and as similarly recited by claims 52 and 66. Further, the citations relied upon by the Final Office Action fail to teach or suggest providing a plurality of ordering controls on a first web page corresponding to sellers other than the featured seller, wherein regardless of which of the plurality of ordering controls is activated, the item is placed in the same shopping cart, as recited by claim 41, and as similarly recited by claims 53 and 67.

The Final Office Action alleges that the foregoing features are disclosed by Miller, stating “Miller, Fig. 5A, which shows a hyperlink by at least a portion of the sellers to ‘Add this to my BuyList,’ i.e. a shopping cart, wherein clicking on the hyperlink will cause the item to be added to the user’s shopping cart and ¶¶ 0151, 0171, 0173, 0176 and 0179”.

However, the Final Office Action appears to be merely speculating as to the functionality of the “Add this to my BuyList” link. Indeed, the specification of Miller (including the paragraphs relied upon by the Final Office Action) never makes reference to a BuyList link. Further, because the specification fails to describe the BuyList link, the specification is not enabling with respect to the BuyList link.

Instead of disclosing providing a first plurality of ordering controls corresponding to at least a portion of the plurality of sellers, wherein activation of any of the plurality of controls will cause the item to be added to the same shopping cart, according to Miller, a user then apparently

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has to activate a link (a "Buy It Now" link) for a given seller and navigate through that seller's particular purchase process ("Links 508 to more information are also provided in the information frame. In this example, links to the manufacturer, a features page, etc. are provided. Several vendors of the product are provided in the section 510 entitled "Buy It Now!" The section 512 entitled "Buy It In Your Neighborhood" lists vendors of the product based on geographic location. Preferably, maps and/or directions to the vendors are made available to the user," Miller, paragraph [0151]).

Thus, it appears that, rather than utilizing the features of claims 40, 41, 52, 53, 66 and 67, in Miller each seller has its own shopping cart, wherein items ordered from different sellers will be placed in different shopping carts.

For at least these reasons, the rejection of dependent claims 40, 41, 52, 53, 66 and 67 is improper.

VIII. CONCLUSION

For the reasons set forth above, Appellants respectfully submit that the rejections of claims 3-11 and 38-70 are improper, and request that these rejections be reversed.

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VIII. CLAIMS APPENDIX

1. (Canceled)

2. (Canceled)

3. A method in a computing system for responding to a request for information about an item, comprising:

receiving at the computer system a request for information about the item from a user;

among a plurality of sellers, identifying via the computer system those (1) that are offering the item for sale, (2) whose availability level for the item exceeds a predetermined availability threshold, and (3) having a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold;

selecting via the computer system as the featured seller of the item, from the sellers identified among the plurality of sellers, the identified seller that is offering the item at the lowest price; and

replying via the computer system to the request for information with a web page associated with a web page containing both (1) information describing the item, and (2) a control that, when activated, adds the item to a shopping cart associated with the user so that the order will be placed from the featured seller when check out is performed, wherein the user can complete the purchase from the featured seller via the website, without performing any subsequent interactions.

4. The method of claim 3 wherein the identifying those (1) that are offering the item for sale, (2) whose availability level for the item exceeds a predetermined availability threshold, and (3) having a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold, and the selecting as the featured seller of the item, from the sellers identified among the plurality of sellers, the identified seller that is offering the item at the lowest price are performed before the receiving the request for information about the item from the user.

5. The method of claim 3 wherein the identifying and selecting is performed at a uniform time interval,

the method further comprising determining a most recently selected featured seller, where the most recently selected featured seller was selected using the acts of identifying those (1) that are offering the item for sale, (2) whose availability level for the item exceeds a predetermined availability threshold, and (3) having a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold, and selecting as the featured seller of the item, from the sellers identified among the plurality of sellers, the identified seller that is offering the item at the lowest price; and

wherein the most recently selected featured seller is used to reply to each of a plurality of received requests.

6. The method of claim 3 wherein the identifying and selecting is performed after the receiving.

7. A computing system for responding to a request for information about an item, comprising:

a receiving subsystem, including program code stored computer readable memory that when executed by a processor performs the act of receiving a request for information about the item;

an identification subsystem, including program code stored computer readable memory that when executed by a processor performs the act of identifying, among a plurality of sellers, those (1) that are offering the item for sale, (2) whose availability level for the item exceeds a predetermined availability threshold, and (3) having a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold;

a selection subsystem, including program code stored computer readable memory that when executed by a processor performs the act of selecting from the sellers identified among the plurality of sellers as the featured seller of the item the identified seller that is offering the item at the lowest price; and

a reply subsystem, including program code stored computer readable memory that when executed by a processor performs the act of replying to the request for information with a web page associated with a website containing both (1) information describing the item, and (2) a control that when activated, adds the item to a shopping cart and indicates that an order for the item is to be placed with the featured seller, wherein the user can complete the purchase from the featured seller via the website, without performing any subsequent interactions.

8. A computer readable medium comprising a page definition data structure and instructions which when executed by a processor are configured to display:

content specifying the display of information describing a selected item; and

content specifying the display of a shopping cart control that may be activated to add the selected item to a shopping cart to enable the ordering of the selected item from a distinguished one of a plurality of sellers, wherein items from multiple sellers can be added to the shopping cart, the distinguished seller being selected by offering the selected item for sale at the lowest price among those sellers of the plurality (1) that are offering the item for sale, (2) whose availability level for the selected item exceed a predetermined availability threshold, and (3) having a seller score that exceeds a predetermined score threshold.

9. The computer readable medium of claim 8 wherein the data structure further comprises contents specifying the display of the control that may be activated to display ordering controls that may be activated to order the selected item from a different one of the plurality of sellers other than the distinguished seller.

10. The computer readable medium of claim 8 wherein the data structure further contains contents specifying the display of one or more secondary controls that may be activated to order the selected item from a different one of the plurality of sellers other than the distinguished seller, wherein the control for the distinguished seller is displayed more prominently than the secondary controls.

11. The computer readable medium of claim 8 wherein the data structure is a web page.

12-32. (Canceled)

33. The method as defined in Claim 3, wherein the featured seller is visually emphasized on the web page with respect to other sellers identified on the web page.

34. The method as defined in Claim 3, wherein the availability threshold is settable to different values.

35. The method as defined in Claim 3, wherein the availability threshold is settable to a time period corresponding to a plurality of days.

36. The method as defined in Claim 3, the method further comprising providing for display to a user who submitted the request a numerical value corresponding to the availability level of at least the featured seller.

37. The method as defined in Claim 3, the method further comprising providing for display to a user who submitted the request a numerical value corresponding to the availability level of sellers in addition to the featured seller.

38. The method as defined in Claim 3, the method further comprising providing for display to a user who submitted the request a numerical value corresponding to an availability level of at least one of the plurality of sellers, wherein the numerical value is settable to a value greater than one.

39. The method as defined in Claim 3, the method further comprising providing for display to a user who submitted the request a range corresponding to an availability level of at least one of the plurality of sellers, the range including a lower bound and an upper bound, wherein the upper bound is different than the lower bound.

40. The method as defined in Claim 3, the method further comprising providing a plurality of ordering controls corresponding to at least a portion of the plurality of sellers, wherein activation of any of the plurality of controls will cause the item to be added to the same shopping cart.

41. The method as defined in Claim 3, the method further comprising providing a plurality of ordering controls on a first web page corresponding to sellers other than the featured seller, wherein regardless of which of the plurality of ordering controls is activated, the item is placed in the same shopping cart.

42. The method as defined in Claim 3, the method further comprising providing a control to a user who submitted the request, which when activated, orders the item from the seller without the user performing any subsequent interactions.

43. The method as defined in Claim 3, the method further comprising providing an indication as to which of the plurality of sellers has a fastest shipping time based on a determination as to which of the plurality of sellers has the fastest shipping time, wherein the determination is made using shipping time information corresponding to the plurality of sellers.

44. The method as defined in Claim 3, the method further comprising:
obtaining and providing for display to a user which submitted the request shipping timing information for the item with respect to the featured seller and at least one other seller.

45. The computing system as defined in Claim 7, wherein the featured seller is visually emphasized on the web page with respect to other sellers identified on the web page.

46. The computing system as defined in Claim 7, wherein the availability threshold is settable to different values.

47. The computing system as defined in Claim 7, wherein the availability threshold is settable to a time period corresponding to a plurality of days.

48. The computing system as defined in Claim 7, wherein the computing system is further configured to provide for display to a user who submitted the request a numerical value corresponding to the availability level of at least the featured seller.

49. The computing system as defined in Claim 7, wherein the computing system is further configured to provide for display to a user who submitted the request a numerical value corresponding to the availability level of sellers in addition to the featured seller.

50. The computing system as defined in Claim 7, wherein the computing system is further configured to provide for display to a user who submitted the request a numerical value corresponding to the availability level of at least one of the plurality of sellers, wherein the numerical value is settable to a value greater than one.

51. The computing system as defined in Claim 7, wherein the computing system is further configured to provide for display to a user who submitted the request a range including an upper bound and a lower bound corresponding to an availability level of at least one of the plurality of sellers.

52. The computing system as defined in Claim 7, wherein the computing system is further configured to provide a plurality of ordering controls corresponding to at least a portion of the plurality of sellers, wherein activation of any of the plurality of controls will cause the item to be added to the same shopping cart.

53. The computing system as defined in Claim 7, wherein the computing system is further configured to provide a plurality of ordering controls on a first web page corresponding to sellers other than the featured seller, wherein regardless of which of the plurality of ordering controls is activated, the item is placed in the user's shopping cart.

54. The computing system as defined in Claim 7, wherein the computing system is further configured to provide a control to a user who submitted the request, which when activated, orders the item from the seller without the user performing any subsequent interactions.

55. The computing system as defined in Claim 7, the method further comprising obtaining and providing for display to a user which submitted the request shipping timing information for the item with respect to the featured seller and at least one other seller.

56. The computing system as defined in Claim 7, wherein the computing system is further configured to provide an indication as to which of the plurality of sellers has a fastest shipping time.

57. The computing system as defined in Claim 7, the method further comprising obtaining and providing for display to a user which submitted the request shipping timing information for the item with respect to the featured seller and at least one other seller.

58. A method in a computing system for responding to a request for information about an item, comprising:

- receiving at the computer system a request for information about the item provided by a user;

- among a plurality of sellers, identifying, using the computer system, those that are:

- offering the item for sale;

- have an availability level that satisfies a first criterion;

- have a seller score relating to a plurality of different items offered for sale by the seller that satisfies a second criterion;

selecting among the identified sellers, using the computer system, as a distinguished seller a seller that is offering the item at a lowest price, offering the item for sale, has an availability level that satisfies the first criterion, and has a seller score that satisfies the second criterion;

providing, via the computer system, for display to the user:

- a perceptible distinction with respect to the distinguished seller;
- a price at which the distinguished seller is offering the item; and
- a shopping cart control that, when activated, adds the item to a shopping cart associated with the user.

59. The method as defined in Claim 58, the method further comprising visually emphasizing the distinguished seller with respect to other sellers on a web page.

60. The method as defined in Claim 58, the method further comprising determining if the first criterion is satisfied by comparing the availability level with a first threshold having a value greater than one.

61. The method as defined in Claim 58, wherein the first criterion is having an availability within a specified quantity of days.

62. The method as defined in Claim 58, the method further comprising providing for display to the user a numerical value corresponding to the availability level of at least the distinguished seller.

63. The method as defined in Claim 58, the method further comprising providing for display to the user a numerical value corresponding to the availability level of sellers in addition to the distinguished seller.

64. The method as defined in Claim 58, the method further comprising providing for display to the user a numerical value corresponding to an availability level of at least one of the plurality of sellers, wherein the numerical value is greater than one.

65. The method as defined in Claim 58, the method further comprising providing for display to the user a range corresponding to an availability level of at least one of the plurality of sellers, wherein the range includes an upper bound and a lower bound.

66. The method as defined in Claim 58, the method further comprising providing a plurality of ordering controls corresponding to at least a portion of the plurality of sellers,

wherein activation of any of the plurality of controls will cause the item to be added to the same shopping cart.

67. The method as defined in Claim 58, the method further comprising providing a plurality of ordering controls on a first web page corresponding to sellers other than the distinguished seller, wherein regardless of which of the plurality of ordering controls is activated, the item is placed in the user's shopping cart.

68. The method as defined in Claim 58, the method further comprising providing a control to the user, which when activated, orders the item from the seller without the user performing any subsequent interactions.

69. The method as defined in Claim 58, the method further comprising obtaining providing an indication as to which of the plurality of sellers has a fastest shipping time.

70. The method as defined in Claim 58, the method further comprising obtaining and providing for display to a user which submitted the request shipping timing information for the item with respect to the distinguished seller and at least one other seller.

71. (Withdrawn) A method in a computing system for responding to a request for information about an item, comprising:

receiving at the computer system a request from a user for information about the item;

(a) among a plurality of sellers, identifying via the computer system those who meet a set of criteria including:

(1) that are offering the item for sale,

(2) whose availability level for the item exceeds a predetermined availability threshold, and

(3) having a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold;

wherein the availability threshold is settable to different time periods;

(b) after (a) is performed, selecting via the computer system from the sellers identified among the plurality of sellers, a seller that is offering the item at the lowest price relative to other sellers identified as meeting the set of criteria; and

replying via the computer system to the request for information with a user interface containing both:

- (1) information describing the item, and
 - (2) a control that, when activated, adds the item to a shopping cart associated with the user so that the order will be placed from the distinguished seller when check out is performed;
- suspending sellers associated with a low score; and

providing via the computer system for display to the user secondary ordering controls that may be activated to order the item from a different one of the plurality of sellers other than the distinguished seller, wherein the control for the distinguished seller is displayed more prominently than the secondary controls,

wherein activation of the control for the distinguished seller or any of the plurality of the secondary controls will cause the item to be added to the same shopping cart.

72. (Withdrawn) The method as defined in Claim 71, the method further comprising, wherein before receiving the request for information about the item from the user, the computer system performs the acts of:

identifying sellers who meet the set of criteria including:

- (1) that are offering the item for sale,
- (2) whose availability level for the item exceeds a predetermined availability threshold,
- (3) having a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold;

selecting the distinguished seller, from the identified sellers, that is offering the item at the lowest price relative to other identified sellers.

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IX. EVIDENCE APPENDIX

None.

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X. RELATED PROCEEDINGS APPENDIX

None.

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